

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF SOCIAL SERVICES  
DIVISION OF BEHAVIORAL HEALTH**

**Individual Beneficiary/Recipient Agreement  
Between**

Human Service Agency  
PO Box 1030  
Watertown, SD 57201

State of South Dakota  
Department of Social Services  
DIVISION OF BEHAVIORAL HEALTH  
700 Governors Drive  
Pierre SD 57501-2291

\_\_\_\_\_  
Referred to as Grantee

\_\_\_\_\_  
Referred to as State

The State hereby enters in to an agreement (the "Agreement" hereinafter) for an award of (Federal) and/or (State) financial assistance to a Grantee.

1. Grantee's South Dakota Vendor Number is 12031085.
2. **PERIOD OF PERFORMANCE:**
  - A. This Agreement shall be effective as of May 1, 2021 and shall end on October 31, 2022, unless sooner terminated pursuant to the terms hereof.
  - B. This Agreement is the result of request for proposal process, RFP # 2236
3. **BASIS FOR SUBAWARD AMOUNTS:**  
This grant is made for the purpose of developing and building a crisis stabilization unit to serve as an appropriate regional facility serving Northeastern South Dakota.

Amount provided by State/Grantor is	\$3,500,000.00
Amount matched by Grantee	\$
Total Grant Amount	\$3,500,000.00

Dollars provided by State/Grantor consist of the following:	
Non-Federal State dollars	\$3,500,000.00

Federal CFDA #	\$
Grant Name	
Agency/Office	
Other	\$

4. PROVISIONS (add an addendum if needed):

A. The Grantee agrees to:

1. Develop and build a crisis stabilization unit to serve as an appropriate regional facility serving the northeast region of South Dakota.
2. Does this Agreement involve Protected Health Information (PHI)? YES ( ) NO ( X )  
If PHI is involved, a Business Associate Agreement must be attached and is fully incorporated herein as part of the Agreement (refer to attachment) .
3. Provide documentation of expenditures incurred.

B. The State agrees to:

1. Reimburse for expenses incurred upon submission of an invoice.

5. PROPERTY MANAGEMENT STANDARDS:

The Grantee agrees to observe Federal Government uniform standards governing the utilization of property whose cost was charged to a project supported by a Federal grant.

6. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding Department of Social Services' rules, regulations and policies to the Grantee and to assist in the correction of problem areas identified by the State's monitoring activities.

7. LICENSING AND STANDARD COMPLIANCE:

The Grantee agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this Agreement. The Grantee will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Grantee's failure to ensure the safety of all individuals served is assumed entirely by the Grantee.

8. ASSURANCE REQUIREMENTS:

The Grantee agrees to abide by all applicable provisions of the following assurances: Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension (Executive orders 12549 and 12689) (Debarment and Suspension), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

**9. COMPLIANCE WITH EXECUTIVE ORDER 2020-01:**

By entering into this Agreement, Grantee certifies and agrees that it has not refused to transact business activities, it has not terminated business activities, and it has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott of divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Grantee further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

**10. RETENTION AND INSPECTION OF RECORDS:**

The Grantee agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, and other information records necessary for reporting and accountability required by the State. The Grantee shall retain such records for a period of six years from the date of submission of the final expenditure report. If such records are under pending audit, the Grantee agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Grantee's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Grantee's established record retention policies.

All payments to the Grantee by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this Agreement shall be returned to the State within thirty days after written notification to the Grantee.

**11. WORK PRODUCT:**

Grantee hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, State Proprietary Information, State Data, End User Data, Personal Health Information, and all information contained therein provided to the State by the Grantee in connection with its performance of service under this Agreement shall belong to and is the property of the State and will not be used in any way by the Grantee without the written consent of the State.

Paper, reports, forms, software programs, source code(s) and other materials which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State nonetheless reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Grantee agrees to return all information received from the State to State's custody upon the end of the term of this Agreement, unless otherwise agreed in a writing signed by both parties.

**12. AUDIT REQUIREMENTS:**

For nonprofit sub-recipients if federal funds of \$750,000 or more have been expended by the Grantee during the Grantee's fiscal year the audit shall be conducted in accordance with OMB Circular A-133, now under Subpart F-Audit Requirements in 2 CFR Part 200 by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Audits shall be completed and filed with the Department of Legislative Audit by the end of the fourth month following the end of the fiscal year being audited. For an A-133, now under Subpart F audit, approval must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit  
A-133 Coordinator  
427 South Chapelle  
% 500 East Capitol  
Pierre, SD 57501-5070

For either an entity-wide, independent financial audit or an A-133, now under Subpart F-Audit, the Grantee assures resolution of all interim audit findings. The Grantee shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., the Department or its' contractor(s) may perform.

Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completely satisfied.

**13. COST PRINCIPLES:**

If applicable, Grantee agrees to comply in full with the administrative requirements and cost principles as outlines in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2 CFR Part 200 (Uniform Administrative Requirements).

**14. TERMINATION:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Grantee breaches any of the terms or conditions hereof, this Agreement may be terminated by the State for cause at any time, with or without notice. Upon termination of this Agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

**15. FUNDING:**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

**16. ASSIGNMENT AND AMENDMENT:**

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

**17. CONTROLLING LAW:**

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be resolved in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

**18. SUPERCESSION:**

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire Agreement with respect to the subject matter hereof.

**19. IT STANDARDS:**

Any software or hardware provided under this Agreement will comply with state standards which can be found at <http://bit.sd.gov/standards/>.

**20. SEVERABILITY:**

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

21. NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Grantee, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

22. SUBCONTRACTORS/SUBGRANTEES:

The Grantee will not use subcontractors or subgrantees to perform work under this Agreement without the express prior written consent from the State. The State reserves the right to reject any person from the contract presenting insufficient skills or inappropriate behavior.

The Grantee will include provisions in its subcontracts or subgrants requiring its subcontractors and/or subgrantees to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Grantee will cause its subcontractors, subgrantees, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors and or subgrantees. The Grantee is required to assist in this process as needed.

23. STATE'S RIGHT TO REJECT:

The State reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement, who present insufficient skills or inappropriate behavior.

24. HOLD HARMLESS:

The Grantee agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Grantee to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

25. INSURANCE:

Before beginning work under this Agreement, the Grantee shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. The Grantee, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Grantee agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Grantee shall furnish copies of insurance policies if requested by the State.

A. Commercial General Liability Insurance:

The Grantee shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Business Automobile Liability Insurance:

The Grantee shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

C. Worker's Compensation Insurance:

The Grantee shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

D. Professional Liability Insurance:

The Grantee agrees to procure and maintain professional liability insurance with limit not less than \$1,000,000.

26. TERMS:

By accepting this Agreement, the Grantee assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written Approval by the State shall be in violation of the terms of this Agreement, and the Agreement shall be subject to termination.

27. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Grantee certifies, by signing this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or any state or local government department or agency. Grantee further agrees that it will immediately notify the State if during the term of this Agreement it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

28. CONFLICT OF INTEREST:

Grantee agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Grantee expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.

29. CONFIDENTIALITY OF INFORMATION:

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Grantee by the State. Grantee acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Grantee shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this Agreement; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information. Grantee is held to the same standard of caring in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Grantee shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Grantee; (ii) was known to Grantee without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Grantee without the benefit or influence of the State's information; (v) becomes known to Grantee without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Grantee understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State if the information disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the Agreement except as required by applicable law or as necessary to carry out the terms of the Agreement or to enforce that party's rights under this Agreement. Grantee acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this Agreement for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If work assignment performed in the course of this Agreement required security requirements or clearance, the Grantee will be required to undergo investigation.

**DSS Purchase Order #: 22SC08B664**  
**DSS Agreement #: 22-0851-664**

**30. RECIPIENT, SUB-RECIPIENT ATTESTATION:**

By signing this Agreement, Recipient or Sub-recipient attests to the following requirements as set forth in SDCL §1-56-10:

(A) A conflict of interest policy is enforced within the recipient's or Sub-recipient's organization;

(B) The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or Sub-recipient's website;

(C) An effective internal control system is employed by the recipient's or Sub-recipient's organization; and

(D) If applicable, the recipient or Sub-recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or Sub-recipient's website.

A recipient or Sub-recipient further represents that any and all concerns or issues it had in complying with the foregoing attestations were raised and addressed by the State prior to signing this Agreement.

In the event of a significant change in the conflict of interest policy, recipient or Sub-recipient agrees to provide immediate notice of such change to the State and provide a copy of the new conflict of interest policy. Recipient or Sub-recipient understands that any change in the conflict of interest policy may result in a change in their monitoring or other performance requirements under the grant and expressly agrees to comply with those changes and to facilitate any additional monitoring as required by the State.

31. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
32. Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
33. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Grantee wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Grantee must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

DSS Purchase Order #: 22SC08B664  
DSS Agreement #: 22-0851-664

34. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

DocuSigned by: <u>Kari Johnston</u> E8A225C3896E48C...	12/29/2021
Grantee Signature	Date

Kari Johnston

Grantee Printed Name

DocuSigned by: <u>Tiffany Wolfgang</u> D7A781CCBA2D433...	12/29/2021
State - DSS Division Director Tiffany Wolfgang	Date

DocuSigned by: <u>Brenda Tidball-Zeltinger</u> 28E0D5995FED422...	12/29/2021
State - DSS Deputy Secretary Brenda Tidball-Zeltinger	Date

DocuSigned by: <u>Laurie R. Gill</u> 08DD8E23C9FF484...	12/30/2021
State - DSS Cabinet Secretary Laurie R. Gill	Date



DSS Purchase Order #: 22SC08B664

DSS Agreement #: 22-0851-664

**State Agency Coding:**

CFDA#				
Company	1000			
Account	52C607010			
Center Req	0851093			
Center User				
Dollar Total	\$3,500,000.00			

DSS Program Contact Person	Stacy Bruels
Phone	605-367-5236

DSS Fiscal Contact Person	Contract Accountant
Phone	605 773-3586

Grantee Program Contact Person	Kari Johnston
Phone	605-886-0123
Grantee Program Email Address	karij@humanserviceagency.org

Grantee Fiscal Contact Person	Michelle Spies
Phone	605-886-0123
Grantee Fiscal Email Address	Michelles@humanserviceagency.org